

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 1-12-1995.

CRIMINAL APPEAL NO. 282 OF 1989

For Approval and Signature:

THE HON'BLE MR. JUSTICE H.R. SHELAT.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ? YES/NO
2. To be referred to the Reporter or not ? YES/NO
3. Whether Their Lordships wish to see the fair copy of YES/NO Judgment ?
4. Whether this case involves substantial question of YES/NO law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge? YES/NO

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Shri S.R. Divetia, Additional Public Prosecutor for the appellant.

Shri S.P. Tamang, Advocate for the respondent. (On record)

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Coram: H.R. Shelat, J.
(1-12-1995)

ORAL JUDGMENT:

The then learned Judicial Magistrate, First Class at Manavadar, delivering the judgment on 6th February 1989, in Criminal Case No. 24 of 1989 on his file, convicted the respondent of the offence under Section 92 of the Factories Act, 1948, for committing the breach of Rule 106 of the Gujarat Factories Rules, 1963, and sentenced him with a fine of Rs.50/-, in default two days simple imprisonment more. The State has therefore preferred this appeal for enhancement of the sentence.

2. Shortly stated, the facts leading the appellant to prefer this appeal are that, Shri S.R. Bodar serving as Factory Inspector visited the factory premises of Harshad Ginning Factory situated at Meetdi in Manavadar taluka on 23rd November 1988. During the visit he could note that the rules required to be

displayed on the Notice Board were not displayed and a breach of Rule 106 was committed. It was also noticed that as required by Section 108(2) of the Factories Act the notice giving particulars about the adult workers was also not displayed and as per Section 42 of the Factories Act adequate and suitable facilities for washing were not provided to the workers. The appellant also found that the breach of Section 22(1) was committed by not maintaining the registers. As such breaches on the part of the respondent were found, and because of those breaches, penal provisions were attracted, the Factory Inspector prepared necessary papers for prosecuting the respondent and filed the complaint before the learned Judicial Magistrate at Manavadar. On being served with the notice, respondent appeared before the lower Court, and when the accusations were read over and explained to him, he pleaded guilty and prayed for mercy. The learned Magistrate accepted the plea of guilty being made voluntarily, and on that plea, convicted and sentenced the respondent as hereinabove stated. The appellant then thought that the sentence inflicted was nothing but a mockery of justice. The punishment was not commensurating with the gravity of offence, and therefore the present appeal has been filed before this Court for enhancement.

3. Mr. Divetia, the learned Additional Public Prosecutor appearing on behalf of appellant, submitted how the learned Judge took a very lenient view though gravity of the offence required to take a harsh view. He urged to heavily come down upon such wrong-doers playing mischief with the health, welfare and safety of the workers. On behalf of respondent, no one appeared though sufficient time was granted and matter was adjourned four times.

4. No doubt, the wrong-doer, if the charge is proved, must be punished and the sentence to be inflicted must be commensurating with the gravity of the offence, and if the Court takes a lenient view in appeal the duty of the Court is to take the view just and proper in the circumstances and pass the sentence commensurating with the gravity of the offence. However, in this case, it would not be possible for me to accept the submission made on behalf of the State because of the decision rendered by the Apex Court. The principle which has been laid down in that decision is exactly applicable to the present case. It may be mentioned that respondent pleaded guilty and thereafter the State has preferred the appeal for enhancement of the punishment. What should be done if such is the case was the point raised before the Supreme Court in the case of Thippeswamy vs. State of Karnataka - AIR 1983 Supreme Court 747, wherein it is held : "Where by reason of plea bargaining the accused pleaded guilty and was convicted and sentenced by Magistrate acting upon his plea of guilty, the enhancement of sentence by the appellate or revisional Court in appeal or revision by acting on plea of guilty would not be reasonable,

fair and just. It would be clearly violative of Article 21 of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly, and then appeal or revision, to enhance the sentence is preferred. The Court of appeal or revision should, in such a case, set aside the conviction and sentence of the accused, and remand the case to the trial Court so that the accused can, if he so wishes, defend himself against the charge, and if he is found guilty, proper sentence can be passed against him". In view of such decision, it would not be fair and just to enhance the sentence as it would be clearly violative of Article 21 of the Constitution. It is possible that respondent might have been induced to plead guilty under certain circumstances or a promise or assurance being given to him either from his advocate or from other sources to which he might have reposed trust. Hence, as made clear by the Supreme Court in the above referred decision, the case should be sent back for fresh trial setting aside the conviction and sentence. In this case, therefore, the conviction and sentence will have to be set aside the case will have to be remanded to the Trial Court for hearing and disposal in accordance with law afresh. In the result, the appeal enhancement has to be dismissed, but for the reasons stated hereinabove, the judgment and order of conviction and sentence will have to be set aside. Accordingly, I dismiss the appeal set aside the judgment and order of conviction, and order to remand the case to the Trial Court for hearing and disposal in accordance with law. The learned Magistrate shall, take up the case for hearing afresh, and affording reasonable opportunities to both the parties, dispose of the case in accordance with law.

5. The parties to appear before the lower Court on 18th December, 1995.

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